

## Nissan -Trading Terms and Conditions

### 1. Acknowledgment and Acceptance of these Terms and Conditions

- 1.1 Vendor has read and understands these terms and conditions.
- 1.2 The Vendor is deemed to have accepted these terms and conditions on the happening of the first of the following events:
  - (a) acceptance of these terms and conditions by the Vendor (including any form of confirmation of order issued by the Vendor);
  - (b) in the case of the supply of goods, the commencement of manufacture or the setting aside of the goods for Delivery to Nissan or the supply of any samples to Nissan;
  - (c) in the case of services, the commencement of any work or services in connection with the Supplies;
  - (d) the issuing of an invoice in respect of the Supplies; and
  - (e) the Delivery of the Supplies to Nissan.

### 2. Interpretation

- 2.1 In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

**'Agreement'** means the purchase order for the Supplies specified in the front of this form as completed and includes these terms and conditions.

**'Confidential Information'** means all of Nissan's confidential information, including designs, process, components, inventions, techniques, methods, ideas, discoveries, developments, formula, specifications, trade secrets, customer lists, sales data, financial data, other knowledge, or any of the other details connected with this Agreement.

**'Delivery'** means:
  - (a) if this Agreement is for the supply of goods (including goods fabricated utilising materials and/or equipment supplied by the Vendor), the actual delivery of all the goods specified in this Agreement by the Vendor to Nissan at the address specified by the Nissan; and
  - (b) if this Agreement is for the supply of services, the supply of all the services specified in this Agreement by the Vendor to Nissan at the address specified by Nissan, and 'deliver' and 'delivered' have corresponding meanings.

**'Nissan'** means Nissan New Zealand Ltd and/or Nissan Financial Services New Zealand Pty Ltd as expressly specified as the Purchaser on the front of this Agreement.

**'Supplies'** means the goods and/or services:
  - (a) to be supplied; or
  - (b) as actually supplied;by the Vendor to Nissan for the purpose of this Agreement.

**'Vendor'** means the supplier of the Supplies specified on the front of this Agreement.

### 3. General

- 3.1 This Agreement specifies the terms and conditions on which Nissan offers to acquire or has agreed to acquire, the Supplies from the Vendor and regulates the rights and obligations of the Vendor and Nissan relating to the Supplies.
- 3.2 This Agreement, constitutes the entire agreement between the parties relating to the goods or service specified herein unless supplemented by a written agreement expressed to be in addition to these terms and expressly accepted and signed by an authorised representative of Nissan. Any terms and conditions stated by the Vendor in accepting or acknowledging these terms and any agreement additional to or differing from the terms stated by Nissan will not be binding unless separately and expressly accepted in writing by Nissan.
- 3.3 These terms and conditions shall prevail and take precedence over the Vendor's standard or special terms for the provision of the Supplies, including any terms that may be printed on any confirmation order, invoice, delivery advice, statement or other writing that may be issued by the Vendor for the provision of the Supplies. This clause shall prevail notwithstanding any statement (oral or written) by the Vendor and notwithstanding any statements to the contrary on forms printed by the Vendor.

### 4. Changes

- 4.1 Nissan reserves the right at any time to make changes in any one or more of the following:
  - (a) Quantity;
  - (b) Specifications, drawings, designs, and/or data;
  - (c) the place or time of Delivery; and
  - (d) Methods of packing or shipment.
- 4.2 No such change will be valid or binding upon Nissan unless incorporated in a change order or additional order signed by an authorised representative of Nissan. If any such authorised change causes the increase or decrease in the cost of performing or in the time required for performance of these terms and conditions an equitable adjustment will be made in price and/or the delivery schedule, and these terms and conditions will be modified in writing accordingly.
- 4.3 The Vendor will charge Supplies specified in this Agreement at a price no greater than the price last quoted and accepted in writing by Nissan's authorised representative.
- 4.4 Any reduction in the Vendor's costs which results from a reduction in the rate of freight, customs duties, sales tax and/or any other duties or taxes from those rates in force at the date of the Agreement will be allowed to Nissan by the Vendor in reduction of the price of the Supplies.

### 5. Drawings and Specifications

- 5.1 All drawings, specifications, and duplicates and photocopies of drawings and specifications supplied by Nissan or created by the Vendor for Nissan will at all times remain the exclusive property of Nissan, subject to recall at any time, and will be returned to Nissan upon completion of this Agreement. Reproductions of such drawings and specifications for any other use is strictly prohibited unless prior written permission has been obtained from Nissan. Vendor will use such drawings and specifications only in connection with this Agreement and will not disclose them to any person, firm or corporation other than employees of Nissan and Vendor who are reasonably required to be aware of such information.
- 5.2 Vendor warrants that it:
  - (a) has examined the specifications set out in this Agreement and any related purchase order;
  - (b) is not aware of any error, fault or ambiguity in the purchase order specifications; and
  - (c) is capable of complying with the specifications set out in this Agreement and any related purchase order in the form agreed by the parties.

### 6. Performance of Work and Shipping Supplies

- 6.1 Unless specific delivery dates are provided in this Agreement, the Vendor shall not carry out any work in respect of any of the Supplies specified in this Agreement, nor procure any of the materials required in their fabrication, nor ship any Supplies to Nissan, except to the extent authorised in written instructions furnished to the Vendor by Nissan.
- 6.2 Nissan shall not be responsible for Supplies for which written delivery instructions have not been provided.
- 6.3 The Vendor shall not delegate in any manner to any other person the performance of any work or the supplying of any Supplies under this Agreement, unless specifically agreed in writing by Nissan.
- 6.4 Shipments in excess of those authorised may be returned to the Vendor and the Vendor shall pay Nissan for all packing, handling and transportation expenses incurred in connection with such shipments and such shipments shall be at the Vendor's risk.
- 6.5 Nissan may from time to time change shipping schedules specified in the purchase order or contained in written instructions or direct temporary suspension of scheduled shipments upon providing reasonable prior written notice.

### 7. Delivery

- 7.1 A provisional date for Delivery is shown on all lot based orders for local components. Deliveries must be made in accordance with Nissan's production schedule which is notified by Nissan to the Vendor. This schedule is the specific document to be used by the Vendor to obtain shipping dates and quantities.
- 7.2 Where Supplies are to be delivered by the Vendor to any person, firm or corporation other than Nissan,

Delivery shall be deemed not to have been made until receipt of those Supplies by that person, firm or corporation and written notification of Delivery has been given to Nissan.

- 7.3 Time is of the essence in this Agreement and if Delivery of goods or performance of services is not completed by the time specified herein, Nissan reserves the right without liability, in addition to other remedies available to it at law, to terminate this Agreement. Upon the occurrence of late Delivery or partial shipment by the Vendor, Nissan may, at its option, either approve a revised delivery schedule and/or service performance schedule or terminate this Agreement with the right to reject the goods and/or services in whole or in part, in addition to any other remedies available to it.
- 7.4 Should Nissan agree to accept partial or late deliveries in lieu of a single Delivery, Vendor agrees to pay, at no expense to Nissan, all additional freight charges, expenses, and damages incurred as a result of the failure to accomplish a timely single Delivery.

### 8. Force Majeure

- 8.1 Neither Nissan nor the Vendor shall be liable for any failure or delay to comply with the terms and conditions of the Agreement when such failure or delay is caused by or arises from any event which is unforeseen by, beyond the control of and occurs without fault or negligence by the party prevented or delayed in performing the obligation. It includes but is not limited to:
  - (a) earthquake, act of God, natural disaster, fire flood, storm, explosion, volcanic eruption, riots, civil commotion, malicious damage, sabotage, war, act of public enemy, revolution, government restrictions, unavoidable accidents;
  - (b) radioactive, biological or chemical contamination or warfare, currency restriction, embargo or a failure of a public utility or computer disruption or the effects of a virus or other malicious code;
  - (c) epidemic or pandemic;
  - (d) a change of law;
  - (e) strikes, labour disputes and other forms of industrial disturbance;
  - (f) power shortage, breakdown of plant, machinery or equipment.
- 8.2 The Vendor must promptly notify Nissan of the cause or event that is preventing or delaying it from performing or carrying out its obligations under this Agreement.

- 8.3 In the event of a failure by the Vendor to perform or carry out any or all of the terms and conditions hereof arising from any of the causes or events set forth in clause 8.1, Nissan shall be entitled to obtain the Supplies covered by this Agreement elsewhere for the duration of the failure and without any obligation to the Vendor, to reduce accordingly the quantity or amount of Supplies ordered from the Vendor under this Agreement.

### 9. Receipt and Inspection

- 9.1 Inspection and acceptance of all goods as to quantity, weight, quality, and conformity to Nissan's specifications will be performed in Nissan's plants after receipt by Nissan, regardless of method of shipment. Vendor agrees to provide reasonable access to facilities and assistance for the safe and convenient inspection and/or audit at Vendor's plant of the goods specified herein, if so deemed necessary by Nissan.
- 9.2 Any inspection, sum paid or extension of time prior to receipt and inspection of the goods by Nissan in Nissan's plants will be without prejudice to Nissan's rights and will not constitute any approval or waiver of Nissan's rights hereunder.
- 9.3 Subject to clause 9.4, risk, ownership and title in and to the goods will pass upon Delivery by the Vendor to Nissan and inspection and acceptance by Nissan in accordance with this clause 9.
- 9.4 The Vendor must bear all risk of loss or destruction of or damage to all or any part of a consignment of defective goods until re-delivery of all or any part of the products replaced by Vendor under clause 10.

### 10. Rejection and Replacement

- 10.1 If any of the goods or services fail to fulfil the requirements of the Agreement, including any related purchase order, Nissan may give notice to the Vendor specifying the defect and requiring rectification.
- 10.2 Upon receipt of notice of defect, the Vendor will immediately remedy the defect and take all steps necessary to meet the requirements of this Agreement, including any related purchase order. If Vendor fails to do so, Nissan may rectify the defect at the Vendor's expense.
- 10.3 If there is any dispute as to the existence of a defect as identified in a notice from Nissan, the Vendor will nonetheless take all steps required by the notice of defect issued by Nissan, but Nissan will reimburse the Vendor for the costs of compliance with the notice if it is subsequently determined that no defect existed.

### 11. Packing slips, Bills of Lading, Invoicing and Payment

- 11.1 The Vendor shall ensure that:
  - (a) each packing slip, bill of lading and invoice bears the applicable purchase order number and the location of the point to which the Supplies are to be shipped; and
  - (b) the original bill of lading is mailed to Nissan at the address specified by Nissan.
- 11.2 Unless expressly otherwise specified, this Agreement and all provisions herein must be fully performed and complied with before payment by Nissan will become due. No payment to Vendor will be construed as irrevocable acceptance by Nissan in case of defective work or goods. The Vendor will submit a separate invoice for each separate purchase order number.
- 11.3 Invoices must be sent promptly via email to [apinvoic@nissan.co.nz](mailto:apinvoic@nissan.co.nz). An invoice must not cover more than one purchase order, the purchase order number and line items must always, as shown on the order, be marked on the invoice(s) and related correspondence.
- 11.4 The date used to calculate payment will be based on the invoice date and, unless otherwise stated, Nissan Standard Payment terms are 60 days after the invoice date, subject to Nissan's Payment Terms Policy or unless otherwise stated.
- 11.5 All taxes to be paid by Nissan, including any Goods and Services Tax or value added tax, must be separately itemized on the invoice.
- 11.6 Invoices may be rejected for non-compliance with any of the provisions of this Agreement and, number and items, as shown on the order, must appear on all invoices and in that event discount and payments will date from the time the corrected invoice(s) are received by Nissan.

### 12. Packing, Marking and Shipping

- 12.1 All Supplies shall be properly packed, marked and shipped by the Vendor and shall in all respects comply with the requirements of the common carrier transporting the Supplies and the requirements of this Agreement and (without limiting the scope of the foregoing) shipped in a manner which will permit the securing of the lowest transportation rates. The Vendor shall route shipments and obtain all necessary customs clearances in accordance with any of Nissan's instructions. The Vendor shall reimburse Nissan for all expenses incurred by Nissan as a result of improper and/or faulty packing, marking or routing.
- 12.2 The Vendor shall mark each package in accordance with Nissan's specific instructions.
- 12.3 Any transportation charges paid by the Vendor with respect to which the Vendor is entitled to reimbursement shall be added to the Vendor's invoice as a separate item and the receipted freight account shall be attached to the invoice.
- 12.4 Unless otherwise provided in this Agreement, no charge shall be made by the Vendor for containers, crating, boxing, bundling, dunnage, drayage or storage.
- 12.5 If, because of the failure of the Vendor to meet the Delivery requirements of this Agreement, Nissan finds it necessary to require shipment of any of the Supplies covered by this Agreement by a method of transportation other than the method originally specified by Nissan, the Vendor shall reimburse Nissan to the full extent of the amount, if any, by which the cost of the alternative method of transportation exceeds the cost of the method of transportation originally specified, unless the failure is due to causes beyond the control and without the fault or negligence of the Vendor.
- 12.6 No variation or addition to the packing charges, transportation charges or duties indicated on the

face of this Agreement will be accepted. The Vendor will suitably pack mark and ship in accordance with specific instructions from Nissan and the requirements of common carriers. The Vendor will be liable for any damage to the goods from its failure to comply with these instructions and requirements. The Vendor will further be liable for any freight charges or duties greater than those specified herein. Shipments sent C.O.D. without Nissan's written consent will not be accepted and will be at the Vendor's risk.

### 13. Sample Parts

13.1 Where this Agreement is for production components, the Vendor, at its own expense, shall fabricate from production tooling and furnish to Nissan the number of sample parts specified by Nissan. The Vendor shall inspect these sample parts prior to Delivery and shall certify inspection results in the manner requested by Nissan.

### 14. Termination at option of Nissan

- 14.1 Performance of work under this Agreement may be terminated by Nissan at its option, in whole or in part, at any time by Delivery, or by mailing, of a written notice of termination to the Vendor.
- 14.2 After receipt of a notice of termination, the Vendor will, unless otherwise directed by Nissan, immediately terminate all work under this Agreement and will, unless otherwise directed by Nissan:
- terminate all orders and subcontracts relating to the performance of the work terminated by the notice of termination;
  - settle all claims arising out of such termination of orders and subcontracts;
  - take all reasonable steps to minimise any losses and claims arising out of such termination;
  - transfer title and deliver to Nissan:
    - all completed work which conforms to the requirements of this Agreement, including any related purchase order and does not exceed, in quantity, the amount authorised for production by Nissan; and
    - all reasonable quantities (but not in excess of amounts authorised by Nissan) of work in process and materials produced or acquired in respect of the performance of the work terminated which are of a type and quality suitable for producing Supplies which conform to the requirements of the purchase order and which cannot reasonably be used by the Vendor in producing Supplies for itself or for its other customers;
  - take all action necessary to protect property in the Vendor's possession in which Nissan has or may acquire a legal or beneficial interest;
  - submit to Nissan promptly, but not later than three months from the effective date of termination (unless otherwise extended by Nissan) its termination claim, provided, however, that in the event of failure of the Vendor to submit its termination claim within such period, Nissan may determine, notwithstanding the provisions of subparagraph (c) and (e) hereof, on the basis of information available to the amount, if any, due to the Vendor with respect to the termination, and such determination will be final.
- 14.3 Upon termination at the option of Nissan under this clause 14, Nissan will pay to the Vendor the following amounts without duplication:
- the purchase order price for all Supplies or services which have been completed in accordance with this Agreement and not previously paid for;
  - the actual costs incurred by the Vendor in accordance with the Agreement to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of this Agreement, including the actual cost of work in process and materials delivered to Nissan in accordance with sub-clause 14.2 (d), and including the actual cost of discharging liabilities which are so allocable or apportionable; and
  - the reasonable costs incurred by the Vendor in protecting property in its possession in which Nissan has or may acquire an interest. Payments made under this clause 14.3, exclusive of payments under sub-clause 14.3(c) hereof, will not exceed the aggregate price specified in this Agreement, less payments otherwise made or to be made.
- 14.4 Nissan will have access to the Vendor's premises and records, prior or subsequent to payment, to verify charges supporting any termination claim.
- 14.5 The provisions of this paragraph 14 will not apply if this Agreement is cancelled by Nissan for the default of the Vendor.

### 15. Termination for Default

- 15.1 The Vendor will be in default if the Vendor:
- ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors or suffers or permits the appointment of a receiver or administrator for its business or assets; or
  - has committed a breach of or is in default of any of its obligations hereunder and such breach or default is incurable or remains uncured for 10 days.
  - refuses to or fails to make deliveries of the Supplies specified in this Agreement within the time specified in the Agreement or in any shipping release issued to the Vendor; or
  - fails to perform any other provisions of the Agreement; or
  - fails to make progress in providing the Supplies by the dates, in the quantities, and of the quality required by Nissan, and does not remedy such failure within a period of ten days after receipt of notice from Nissan, specifying the failure, Nissan, subject to the provisions of clause 8 (Excusable Delays) of this Agreement, may, by delivery or by mailing of a written notice of termination to the Vendor, terminate this Agreement, in whole or in part and Nissan shall be under no liability of any kind to the Vendor for any loss or damage of any kind to the Vendor.
- 15.2 Nissan may, subject to any cure period provided in this Agreement, terminate this Agreement at any time that the Vendor is in default by providing written notice to the Vendor.
- 15.3 Termination of this Agreement under this clause 15 or under any other clause of this Agreement does not affect any accrued rights or remedies of either party.

### 16. Warranty and Indemnity

- 16.1 The Vendor warrants that:
- all goods and services covered by this Agreement (irrespective of whether engineering design, data or information has been furnished, reviewed or approved by Nissan) will be produced and all services stipulated herein have been performed in compliance with the descriptions and specifications of this Agreement, including any related purchase order;
  - all such Supplies will be of merchantable quality, and of acceptable quality as defined by the *Consumer Guarantees Act 1993*;
  - the Supplies will be fit for Nissan's purpose of supplying them to any of Nissan's customers or as a component part of goods (including motor vehicles) supplied by Nissan to its customers;
  - the Supplies will be fit for any particular purpose that Nissan has made known to the Vendor expressly or by implication as the purpose for which the Supplies are being acquired by Nissan;
  - the Supplies will be fit for any particular purpose for which the Vendor has represented that they are or will be fit;
  - the Supplies will be of good material and workmanship;
  - the Supplies will be free from any defect or fault of any kind whatsoever; and
  - the Vendor has good title to all such goods, free from all liens, encumbrances and charges.
- 16.2 Nissan's acceptance of Delivery of the Supplies shall be subject to inspection and test for defects and compliance with this Agreement. Acceptance by Nissan of Delivery is deemed to be conditional acceptance of the Supplies only subject to Nissan's right to reject the Supplies or to claim and recover losses or damages arising.
- 16.3 Without prejudice to any other rights which Nissan may have, Nissan may reject at its option, return, or retain and correct any goods that do not conform with this clause. Goods rejected will, at Nissan's option, be held at the Vendor's risk or returned for credit at the Vendor's risk and expense.
- 16.4 If any consumer information standard or product safety standard has been prescribed in relation to any Supplies, the Vendor will ensure that the Supplies comply with the relevant

consumer information standard or product safety standard.

- 16.5 The Vendor indemnifies and must keep indemnified Nissan and its directors, officers, employees, agents and advisers from and against any liability, loss, harm, damage, duty, cost or expense (including any legal fees) which they may suffer, incur or sustain as a result of or in connection with:
- damages and injuries to persons and property, including, but not limited to Nissan employees and property, that occur as a result of the fault or negligence of the Vendor, its agents, servants, or employees, in connection with the performance of this Agreement; and
  - a breach of this Agreement by the Vendor (including a breach of warranty given in this Agreement) or any omission, negligence or breach of statute by or on behalf of the Vendor under or in relation to this Agreement;
  - any loss of or damage to property or injury or death to any person caused by any negligent act or omission or willful misconduct of the Vendor or any of its personnel; and
  - the cost of any recall campaign or other corrective action or field service actions that are required to rectify any defective products produced by the Vendor, except to the extent that the defect is caused by the act or omission of Nissan or its employees.
- 16.6 This clause shall survive the termination of the Agreement.

### 17. Safety

17.1 The Vendor agrees that the work performed pursuant to this Agreement will be performed in a safe manner and in compliance with any applicable safety regulations, codes of practice and industry standards. Any person performing such work will be suitably qualified and hold any necessary license or permit in relation to the work undertaken.

### 18. Insurance

- 18.1 Before commencing work the Vendor will furnish to Nissan a certificate of insurance showing that the Vendor carries adequate insurance, including:
- insurances required by law;
  - all reasonably necessary insurances that a prudent person would obtain given the nature of the business conducted by the Vendor; and
  - any other insurances that Nissan reasonably requires, with insurers and in amounts acceptable to Nissan.
- 18.2 The failure by the Vendor to furnish to Nissan, or the failure by Nissan to obtain, such a certificate of insurance will not constitute a waiver of the requirement for such a certificate or of any other provision of this order.

### 19. Work performed on Nissan's premises or utilising Nissan's Property

- 19.1 If the Vendor performs any work on Nissan's premises or utilises the property of Nissan, whether on or off Nissan's premises, the Vendor will comply with any reasonable direction by Nissan in relation to such work, including without limitation any direction regarding safety or environmental standards or procedures.
- 19.2 If the Vendor is required by the terms of this Agreement to perform, any work on Nissan's premises, the Vendor agrees that the Vendor shall be responsible for any damage or injury of any kind whatsoever to any person or property, including Nissan's employees and property, that occurs as a result of the fault or negligence of the Vendor, its agents, servants, or employees, in connection with the performance of the work, and the Vendor agrees to indemnify Nissan and keep Nissan indemnified from and against any liability for the damage or injury.
- 19.3 Before commencing any work on Nissan's premises, the Vendor shall furnish to Nissan a certificate of insurance showing that the Vendor in Nissan's opinion carries adequate public liability. The failure by the Vendor to furnish to Nissan, or failure of the Vendor to obtain, a certificate of insurance will not constitute a waiver of the requirement for the production of such certificate or the observance of any provisions of this Agreement.
- 19.4 The Vendor will at all times during the performance of work relating to this Agreement comply with the statutory duties imposed by the *Health and Safety at Work Act 2015* and on demand by Nissan will produce to Nissan evidence that it has instituted and is carrying out a compliance and training programme in relation to that Act with its employees and subcontractors.
- 19.5 This clause shall survive the termination of the Agreement.

### 20. Bailed Property

- 20.1 Unless otherwise provided in this Agreement or in any other Agreement between Nissan and the Vendor, all Supplies, materials, facilities, tools, jigs, dies, fixtures drawings, patterns, blueprints, specifications, patterns and equipment of any kind whatsoever furnished to the Vendor by Nissan to perform this Agreement or for which Vendor has been reimbursed by Nissan will remain the property of Nissan. The Vendor shall, at its own cost, insure the bailed property of Nissan for the value specified by Nissan, and shall note that Nissan's interest in the bailed property on such policy of insurance.
- 20.2 The Vendor will properly maintain, house, care for, repair or if necessary replace all Nissan-owned tooling and will bear the risk of loss or damage thereto including normal wear and tear. Such property will
- be deemed to be personal;
  - be properly housed and maintained by the Vendor;
  - be marked 'Property of Nissan Group of Companies.' by Vendor;
  - not be commingled with the property of Vendor or with that of a third person;
  - not be moved from Vendor's premises without Nissan's prior written approval; and
  - upon request of Nissan, be immediately delivered to Nissan by Vendor F.O.B or carrier at the Vendor's plant properly packed and marked in accordance with the requirements of the carrier selected by Nissan to transport the bailed property, or upon request of Nissan, be immediately delivered to Nissan by the Vendor at any location designated by Nissan, in which event Nissan, shall pay to the Vendor the cost of delivering the bailed property to that location.
- 20.3 Such property, properly packed and marked in accordance with the requirements of the carrier selected by Nissan to transport such property, will upon request of Nissan be immediately delivered to Nissan by Vendor at any location designated by Nissan, in which event Nissan will pay to Vendor the cost of delivering such property to such location.
- 20.4 Nissan will have the right to enter onto the Vendor's premises at all reasonable times to inspect such property and the Vendor's records with respect thereto.

### 21. Intellectual Property

- 21.1 By accepting this Agreement, the Vendor guarantees that the goods and/or services described herein, except such as are made to Nissan's detailed designs, the sale or use of them, will not infringe or contribute to the infringement of any patent, trademark, copyright, or other intellectual property right and the Vendor agrees the indemnify, hold harmless and protect Nissan, its affiliates and subsidiary companies, successors, assigns, customers and users from and against all losses, damages, liabilities, claims, demands (including legal fees) and suits at law or equity for actual or alleged infringement of any patents, trademarks, copyrights or corresponding rights pertaining to the goods and/or services subject to this Agreement.
- 21.2 Any Supplies bearing the registered trade mark of Nissan which are returned to the Vendor or rejected or otherwise not accepted by Nissan shall not be sold or otherwise disposed of by the Vendor while still bearing the registered trade mark of Nissan.
- 21.3 Supplies manufactured or supplied to specifications or designs partially or wholly developed by Nissan shall be exclusive to Nissan. These Supplies shall not be sold or supplied to any third party or otherwise used or disposed of by the Vendor without express written consent of the Vendor.
- 21.4 Unless stated otherwise in writing signed by Nissan, the Vendor agrees that all intellectual property rights subsisting in or created or collected as a result of or in connection with this Agreement, will vest in and remain the property of Nissan. The Vendor agrees to execute any document and do anything reasonably required by Nissan to assist Nissan in obtaining or perfecting Nissan's title to such intellectual property rights.
- 21.5 The Vendor grants to Nissan, and any third party who is permitted by Nissan to use the goods or services provided by the Vendor to Nissan, an irrevocable, worldwide, perpetual, non-exclusive, royalty-free, paid-up license to use, adapt, modify, communicate and/or develop any intellectual

property rights:

- (a) contained in the goods or services that have not been or are not capable of being transferred to Nissan under this Agreement; and
- (b) in pre-existing documentation, information, materials or know-how of Vendor utilised by it for the purposes of this Agreement.

21.6 The Vendor warrants that the Supplies specified in this Agreement (and their sale or use, alone or in combination, according to the Vendor's specifications or recommendations if any) will not infringe any existing patents, trademarks, or other intellectual property rights, or breach of any of the provisions of the *Fair Trading Act 1986*.

## **22. Sub-Contractors**

- 22.1 The Vendor agrees that, notwithstanding that Nissan may consent to the Vendor's engagement of a subcontractor, the Vendor will:
- (a) remain principally responsible for the due fulfillment of each of its obligations under this Agreement, and fully liable for any failure to fulfill such obligations; and
  - (b) be liable for the fees and costs of any subcontractor and will be responsible and liable for all acts and omissions of the subcontractor.
- 22.2 The Vendor must ensure that any goods or services (or any element thereof) supplied by any subcontractor meets the requirements of this Agreement.

## **23. Assignment**

- 23.1 The Vendor will not assign, sublet or transfer this Agreement, or any part thereof, or any payments due or to become due hereunder, without prior written consent of Nissan, and any such assignment, subcontract or transfer without such written consent will be null and void.
- 23.2 Nissan may assign and/or transfer all of any part of its rights, title, interest and obligations under this Agreement to any person at any time

## **24. Insolvency**

- 24.1 The insolvency on part of either party shall give to the other party the right to cancel and terminate this Agreement.

## **25. Waiver**

- 25.1 The Waiver by Nissan of any specific default or defaults by the Vendor or failure by Nissan to cancel or terminate this Agreement or any part of it when a right of cancellation or termination arises shall not constitute waiver by Nissan of any of the terms and conditions of this Agreement with respect to any further or subsequent default or defaults by the Vendor or any cause herein stated which gives rise to a right of cancellation or termination.

## **26. Compliance with Laws, policies and instructions from Nissan**

- 26.1 The Vendor agrees that in the manufacture and sale of goods and the furnishing of services to Nissan, the Vendor will comply with all applicable laws, including any legislation, regulation, by-law or directive of any authority with jurisdiction with regard to the Vendor's activities. The Vendor will obtain all necessary consents, permits and licenses and pay any regulatory or license fees necessary to comply with this Agreement.
- 26.2 The Vendor acknowledges that Nissan is committed to taking reasonable steps to ensure that there is no modern slavery or corruption in its supply chains. Without limiting clause 26.1, the Vendor agrees and warrants that:
- (a) it will comply with all applicable laws relating to anti-bribery and anti-corruption;
  - (b) neither it nor any of its approved sub-contractors, will utilise slave, prisoner, child, or any other form of forced or involuntary labour or any other similar conduct in connection with the provision of goods or services under this Agreement;
  - (c) it will implement and maintain appropriate due diligence procedures for its own suppliers; and
  - (d) it will notify Nissan as soon as it becomes aware of any suspected modern slavery, corruption or bribery in its or its supply chain and will maintain complete records to trace the supply chain of all goods and services.

26.3 The Vendor indemnifies Nissan against any such fees or any loss, liability or damage resulting from any failure by the Vendor to comply with such laws.

26.4 Upon request from Nissan, the Vendor will provide Nissan with copies of any consents, permits, licenses, certificates or other documents relevant to the Vendor's compliance with such laws.

26.5 The Vendor will comply with applicable Nissan policies and procedures (as notified by Nissan from time to time) as they relate to the Vendor and the supply of goods and/or services under this Agreement

## **27. Confidential Information**

- 27.1 Any drawings, blueprints, specifications, patents and other information supplied by Nissan in connection with this Agreement (including any bailed property) at any time remains the confidential property of Nissan and shall be used solely for the provision of Supplies by the Vendor to Nissan and except with the prior consent in writing of Nissan, for no other purpose and shall be returned to Nissan on demand.
- 27.2 Goods made by Vendor in accordance with Nissan's specifications, drawings, or samples will not be furnished or quoted to any other person or concern. Nor will they be copied (either in whole or in part) sold, offered, or advertised for sale by the Vendor without Nissan's express written consent.
- 27.3 The Vendor agrees that during and after its fulfillment of its obligations under this order, it will not directly or indirectly disclose to any third person for the use or the benefit of anyone other than Nissan, any item of Nissan's property or part thereof, nor will the Vendor disclose or use any Confidential Information, as that term is defined herein, provided by Nissan or otherwise acquired through the Vendor's access to or observation of Nissan's facilities, records, studies, activities, except as is necessary to fulfill its obligations under this Order or as required by law.
- 27.5 This clause shall survive the termination of the Agreement.

## **28. Personal Information**

28.1 With respect to personal information disclosed to or received from Nissan, the Vendor represents and warrants that it has complied and will continue to comply with all applicable laws pertaining to the personal information in question, including, without limitation, the *Privacy Act 1993*.

## **29. Set-Off**

29.1 Nissan may, at any time, set off and apply any indebtedness and liabilities of Nissan to the Vendor against and on account of any indebtedness and liabilities of the Vendor to Nissan.

## **30. Dispute Resolution**

- 30.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 30.
- 30.2 A party claiming that a dispute, difference or question arising out of this Agreement has arisen (**Dispute**) must give the other party notice of details of the Dispute (**Dispute Notice**).
- 30.3 During the 14 days after a Dispute Notice is given under clause 30.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute.

## **31. Remedies**

31.1 The warranties and remedies available to Nissan under the terms of this Agreement will be cumulative and in addition to those implied by or available at law or equity. In particular it is expressly agreed that the warranties and remedies provided for in this Agreement and those which may be available to Nissan under the *Contract and Commercial Law Act 2017* (or any Act in substitution) will be available to Nissan notwithstanding Nissan's acceptance, in whole or in part, of Supplies in respect of which such warranties and remedies are applicable. No waiver of any breach of this Agreement will be construed to constitute a waiver of any other breach or of any provision hereof.

## **32. Applicable Law**

32.1 This Agreement is subject to and governed by the laws of New Zealand.